



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



September 2015

One of the duties of the Peace Officer Standards and Training Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these individuals in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On September 14, 2015, POST Council convened and considered 8 cases of officer discipline.

Case #1

Officer A, a certified special function and correctional officer, reported to POST he failed to disclose drug use information on his two previous POST applications. During a *Garrity* interview with POST, Officer A admitted to using marijuana in 1994 and said he failed to document the information on his first application because it was so long ago he didn't believe it mattered. Officer A said he did not disclose the marijuana use on his second POST application because he was told to make sure the two applications matched. Officer A said he applied for a full-time position with a local agency and, as part of the hiring process, was required to submit to a voice stress analysis examination. He said it was during the examination when he disclosed the marijuana usage. A Notice of Agency Action filed by POST was mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer A's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer A's certifications for nine months.

Case #2

Officer B, a certified correctional officer, was investigated by a local agency for shoplifting. The case was screened with a local prosecutor and charges were filed. Officer B entered a guilty plea, to be held in abeyance, to the charge of retail theft, a class B misdemeanor. During *Garrity* interviews with Officer B's agency and POST, Officer B admitted to taking items from a department store without paying, but stated it was unintentional. Officer B was terminated by her agency. A Notice of Agency Action filed by POST was mailed to Officer B. Officer B waived her right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer B's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer B's certifications for one year.

Case #3

Officer C, a certified law enforcement officer, reported to POST that he had ingested a prescription medication provided by a co-worker to help him with sleeping difficulties. After finding the prescription effective, Officer C contacted his doctor and obtained his own prescription for this medication. Officer C said he applied for employment with another agency and, during a pre-employment screening, he disclosed the prescription use. Officer C reported the misuse of a prescription drug to his current agency. The agency elected not to take any action. The agency with whom he had applied offered Officer C employment and he began working for the new agency prior to this case coming before the POST Council. During a POST *Garrity* interview, Officer C admitted to taking the prescription medication and admitted knowing it was wrong. A Notice of Agency Action filed by POST was mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge. POST recommended a three month suspension of Officer C's certification. After hearing POST's findings, and hearing from Officer C, the Council rejected POST's recommendation and voted to issue Officer C a letter of caution.

Case #4

Officer D, a certified law enforcement officer, was investigated by a local agency for road rage and assault. Officer D was charged, in the local justice court, with assault, which was later amended to disorderly conduct. Officer D's attorney filed a motion with the court and the case was eventually dismissed. During both the agency and POST *Garrity* interviews, Officer D admitted he was involved in a road rage incident during which he confronted four juveniles in a parking lot. Officer D admitted he made physical contact with one of the occupants by grabbing the juvenile's arm and then throwing the juvenile's hand upward. Officer D received a letter of counsel from his agency. A Notice of Agency Action filed by POST was mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge. POST recommended a letter of caution be issued to Officer D. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer D a letter of caution.

Case #5

Officer E, a certified law enforcement officer, was investigated by his agency and a local agency, concerning allegations of improper accessing of Bureau of Criminal Identification records. Officer E resigned from his agency prior to being interviewed. Charges were screened with a local prosecutor, but were declined. During a POST *Garrity* interview, Officer E admitted he accessed BCI records to check a vehicle registration at the request of a friend and it was not for a legitimate law enforcement purpose. A Notice of Agency Action filed by POST was mailed to Officer E. Officer E waived his right to a hearing before an administrative law judge. POST recommended a six month suspension of Officer E's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer E's certification for three months.

Case #6

Officer F, an unemployed, certified law enforcement officer made application to a local law enforcement agency. During the background investigation it was discovered **Officer or Mr. F** purchased alcohol for his underage girlfriend at least twice. One incident occurred prior to Officer F attending a satellite police academy and a second incident occurred while officer F was attending the academy. **Officer or Mr. F** completed both the SFO and LEO blocks of instruction and did not disclose his violation of law to anyone at the academy. **Officer or Mr. F** submitted a verification of information form, and an addendum, to his POST application, but choose not to disclose the furnishing of alcohol to a minor. The local agency reported **Officer or Mr. F** to POST. During a POST *Garrity* interview, **Officer or Mr. F** admitted to furnishing alcohol to his 18 year old girlfriend on two occasions and also admitted failing to disclose this information

to POST. A Notice of Agency Action filed by POST was mailed to **Officer or Mr. F.** **Officer or Mr. F** waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of **Officer or Mr. F's** certification. After hearing POST's findings, and hearing from **Officer or Mr. F**, the Council rejected POST's recommendation and voted to suspend **Officer or Mr. F's** certification for one year.

Case #7

Officer G, a certified correctional officer, was investigated by a local law enforcement agency for a red light violation and speeding. During the stop, the investigating officer observed some indications that Officer G may have been drinking. Officer G was released at the scene to a responsible party. The next day, Officer G drove to the home of his girlfriend with whom he had been arguing the previous night. The local police were contacted, responded and met with Officer G. The responding officers did not observe Officer G driving; however, they did observe Officer G showing signs of impairment. The responding officers had Officer G submit to a portable breath test. The result of the portable breath test was a .156 breath alcohol content. Officer G was transported by officers to a friend's home. No criminal charges were filed on Officer G. Officer G's agency conducted an internal administrative investigation and during the *Garrity* interview, Officer G admitted to driving while impaired. Officer G was terminated from his agency and moved out of state. Sometime after moving out of state Officer G was stopped by police for DUI. On this occasion Officer G's blood alcohol content was .24 grams per milliliter of blood. Officer G was charged in that state with Driving Under the Influence and entered a guilty plea to an amended charge of impaired driving. During a POST *Garrity* interview, via telephone, Officer G admitted to driving impaired and having an open alcohol container in his vehicle when he was stopped in Utah. Officer G also disclosed he had been arrested for DUI, in the state in which he was currently living. A Notice of Agency Action filed by POST was mailed to Officer G who failed to respond. An Order of Default was issued and signed by an administrative law judge. POST recommended a two and one-half year suspension of Officer G's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer G's certification for two and one-half years.

Case #8

Officer H, a certified correctional officer, was investigated by a local agency for disorderly conduct and interfering with an arresting officer. Investigation disclosed Officer H was being treated at a hospital for a personal issue when she became disruptive to the attending personnel. An officer was called to assist and Officer H became combative. Officer H was subsequently physically restrained and eventually transported to a detaining facility for treatment. Charges were screened with a local prosecutor and charges were filed. Officer H pled guilty to a charge of disorderly conduct, reduced to an infraction and the interfering with an officer was dismissed. During a *Garrity* interview with her agency, Officer H admitted to her behavior while receiving treatment. During a POST *Garrity* interview Officer H admitted to her behavior and said she was receiving counseling. A Notice of Agency Action filed by POST was mailed to Officer H. Officer H waived her right to a hearing before an administrative law judge. POST recommended Officer H receive a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer H a letter of caution.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. The POST Council Disciplinary Guidelines can be found online at <http://publicsafety.utah.gov/post/>. Please direct any questions regarding the statute or the POST investigation process to support@utahpost.org

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
 - (f) engages in sexual conduct while on duty; or
 - (g) is dismissed from the armed forces of the United States under dishonorable conditions.

- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

- (3)
 - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.
 - (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

- (4)
 - (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
 - (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
 - (i) has a personal bias for or against the officer;
 - (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
 - (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

Repealed and Re-enacted by Chapter 313, 2010 General Session

R728-409-3. Definitions.

- A. Terms used in this rule are defined in Section 53-6-102.
- B. B. In addition:
3. "on duty" means that a peace officer is:
- a. actively engaged in any of the duties of his employment as a peace officer;
 - b. receiving compensation for activities related to his employment as a peace officer;
 - c. on the property of a law enforcement facility;
 - d. in a law enforcement vehicle which is located in a public place; or
 - e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;
6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.